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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/698,860	10/31/2003	John C. Condon	CONDON-42615	9348

26252 7590 08/09/2005  
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EXAMINER

OKEZIE, ESTHER O

ART UNIT PAPER NUMBER

3654

DATE MAILED: 08/09/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b> 10/698,860	<b>Applicant(s)</b> CONDON, JOHN C.	
	<b>Examiner</b> Esther O. Okezie	<b>Art Unit</b> 3654	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 19 May 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1,3-5,7-9 and 12-29 is/are pending in the application.
- 4a) Of the above claim(s) 22 is/are withdrawn from consideration.
- 5) ☒ Claim(s) 16-21 and 23-29 is/are allowed.
- 6) ☒ Claim(s) 1,3-5,8,9 and 12-15 is/are rejected.
- 7) ☒ Claim(s) 7 is/are objected to.
- 8) ☒ Claim(s) 22 are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## **DETAILED ACTION**

### ***Response to Amendment***

The amendment filed on 5/13/2005 and the remarks presented therewith have been carefully considered but are moot in view of the new ground(s) of rejection.

### ***Election/Restrictions***

Claim 22 is withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected species, there being no allowable generic or linking claim. Election was made **without** traverse in the reply filed on January 14, 2005.

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

1. Claims 1,4,5,8,9 are rejected under 35 U.S.C. 102(b) as being anticipated by Sherhandt.
2. Re claim 1 Sherhandt discloses an animal litter remover and bagger comprising: an outer tube (12) including an open end (14); an inner tube (66,68) slidably movable within the outer tube, and positioned within and coaxial with the

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outer tube along a longitudinal axis; a gear assembly (fig 5) operationally connecting the inner tube and the outer tube; means for holding a closed end of a disposable bag within the outer tube (24), means for moving the apparatus between open and closed configurations (20), and a clamp assembly (28,30) for grasping the waste as the apparatus moves from the open configuration to the closed configuration, connected generally about a perimeter of the outer tube open end; wherein the clamp assembly brings the waste into the bag as the apparatus moves from the open configuration to the closed configuration (see fig 2).

3. Re claim 4, a spring (70) connecting the inner tube to the moving means.

4. Re claim 5, wherein the inner tube moves away from the open end of the outer tube, pulling the bag further within the outer tube as the apparatus moves from the open configuration to the closed configuration (see fig 2).

5. Re claim 8, wherein the clamp assembly includes at least two jaws (28,30), pivotally movable towards the open end of the outer tube as the apparatus moves from the open configuration to the closed configuration.

6. Re claim 9, wherein the outer tube surrounds a portion of the jaws as the apparatus moves from the open configuration to the closed configuration (see fig 1).

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

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(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

1. Claim 1,3,4,5,8,9,12,13,14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Nadratowski US 4,078,838 in view of Marshall PG-Pub 2003/0160470 A1.

7. Re claim 1, Nadratowski discloses a tubular implement for picking up dog feces in a sanitary manner comprising: an outer tube (14) including an open end; an inner tube (18) slidably movable within the outer tube, and positioned within and coaxial with the outer tube along a longitudinal axis; means for holding a closed end of a disposable bag within the outer tube (22), means for moving the apparatus between open and closed configurations (19), and a clamp assembly (23) for grasping the waste as the apparatus moves from the open configuration to the closed configuration, connected generally about a perimeter of the outer tube open end; wherein the clamp assembly brings the waste into the bag as the apparatus moves from the open configuration to the closed configuration (see fig 4).

Nadratowski does not disclose a gear assembly operationally connecting the inner tube and the outer tube means for moving the apparatus between open and closed configurations. Marshall discloses a toroidal shaped tubular gripping member with substantially the same configuration as Nadratowski including an outer tube (2) including an open end (12); an inner tube (76) slidably movable within the outer tube, and positioned within and coaxial with the outer tube along

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a longitudinal axis, shown in figures 5, 15A and 15B. Marshall shows a gear assembly (70) shown in figure 9 operationally connecting the inner tube and the outer tube means for moving the apparatus between open and closed configurations (fig 9), and a clamp assembly (10a, 10b) for grasping the waste as the apparatus moves from the open configuration to the closed configuration, connected generally about a perimeter of the outer tube open end; wherein the clamp assembly brings the waste into the apparatus as the apparatus moves from the open configuration to the closed configuration (figs 3A-4G).

Marshall and Nadratowski work in substantially the same manner by using an outer tube actuated by an inner tube to grip and object and include a rod surrounded by a spring and a handgrip at the distal end for operation of the device (see Marshall fig 9, Nadratowski: fig 3). It would have been obvious to one of ordinary skill in the art to modify Nadratowski as taught by Marshall to include a gear assembly for operationally connecting the inner tube and the outer tube for moving the apparatus between open and closed configurations in order to more precisely grip small objects or objects that require a firmer hold (Marshall: page 3, paragraph 52).

2. Re claim 3, Nadratowski discloses the holding means (22) connected to the inner tube (18).

3. Re claim 4, Nadratowski discloses a spring (20) connecting the inner tube (18) to the moving means (19).

8. Re claim 5, Nadratowski discloses the inner tube moves away from the open end of the outer tube, pulling the bag further within the outer tube as the

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apparatus moves from the open configuration to the closed configuration (see figures 3 and 4).

9. Re claim 8, Nadratowski discloses the clamp assembly includes at least two jaws (23,24), pivotally movable towards the open end of the outer tube as the apparatus moves from the open configuration to the closed configuration (figs 5 and 6).

10. Re claim 9, Nadratowski discloses the outer tube (14) surrounds a portion of the jaws as the apparatus moves from the open configuration to the closed configuration (see fig 4).

11. Re claim 12, Nadratowski discloses the outer tube is operationally connected to the clamp assembly whereby slidable movement of the outer tube along a longitudinal axis away from and towards the clamp assembly respectively opens and closes the clamp assembly (see figures 1-6).

12. Re claim 13, Nadratowski discloses the moving means includes a trigger assembly (19) operationally connected to the holding means (23) by rod (18).

13. Re claim 14, Nadratowski discloses the moving means includes a handle portion (16) operationally connected to the outer tube (14; see fig 1).

4. Claim 15 is rejected under 35 U.S.C. 103(a) as being unpatentable over Nadratowski in view of Marshall and Further in view of Hammer. The combination of Nadratowski and Marshall discloses the apparatus as described above but does not disclose at least two spur gears and the outer tube including a plurality of grooves. Nadratowski discloses a spur gear (pinion 92) in the handle portion

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(70) including a first gear drive (86) and a second gear drive (88) wherein the spur gear pivots between the gear drives of the inner tube whereby the handle portion operationally connects the inner and outer tubes (fig. 9). Hammer discloses an extendable reaching tool including two spur gears (240, 242) and a first drive gear (224) on the outer tube (202) and a second gear drive (224) on the inner tube (204; see fig 11).

Both the devices of Nadratowski and Hammer work in substantially the same manner using a gear arrangement to slide interconnected tubes. It would have been an obvious matter of design choice to provide two gears instead of one as taught by Hammer and gear drives provided on the outer and inner tubes respectively also taught by Hammer in order to modify the combination of Nadratowski and Marshall.

#### ***Allowable Subject Matter***

Claim 7 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Claims 16-21 and 23-29 are allowed.

#### ***Response to Arguments***

Applicant's arguments with respect to claim 1,3-5,8,9,12-21,23-29 have been considered but are moot in view of the new ground(s) of rejection as described above.



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***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Esther O. Okezie whose telephone number is (571) 272-8108. The examiner can normally be reached on Mon-Thurs 8-6:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Katherine A. Matecki can be reached on (571) 272-6951. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

EOO

  
DEAN J. KRAMER  
PRIMARY EXAMINER